

ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Amendment of Section 73.202(b))

Table of Allotments)

FM Broadcast Stations)

(Cordele, Cusseta, Cuthbert,)

Dawson, Hawkinsville, Leary,)

Montezuma, and Nashville,)

Georgia))

MM Docket 93-270

RM-8323

RM-8339

RM-8428

RM-8429

RM-8430

To: Assistant Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

REPLY COMMENTS

1. Walter McCrary, Jr. ("McCrary"), by his counsel, hereby replies to the counterproposals of Tifton Broadcasting Corporation ("TBC"), Tri-County Broadcasting Company and Montezuma Broadcasting ("Tri-County"), and Dawson Broadcasting Company ("DBC") as set forth in the Public Notice of January 28, 1994, Report No. 1997. McCrary supports the retention of Channel 264A at Cuthbert, Georgia, as its only local FM channel and only full-time local aural service.

2. On January 4, 1994, McCrary filed reply comments to the counterproposal of Tri-County to the extent it proposed to delete Channel 264A from Cuthbert without replacement. McCrary takes no position as to the public interest benefits of

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upgrading Station WCEH-FM, Hawkinsville, Georgia, and the vacant allotment at Montezuma compared to the conflicting proposals of Station WJYF(FM), Nashville, Georgia, and Station WAZE(FM), Dawson, Georgia, for higher class channels.

3. McCrary opposes any scenario which may be proposed which would delete Cuthbert's only FM channel without replacement.

4. Cuthbert (population 3,730) (1990 U.S. Census) is the largest community in Randolph County (population 8,023) in a rural area of southwest Georgia. The only local radio service offered in Cuthbert and Randolph County is Station WCUG(AM), a daytime only facility with 500 watts on 850 kHz. Thus, Cuthbert and the surrounding area are in need of local service, particularly at night.

5. McCrary is a local businessman and only recently became aware of the availability of Channel 264A at Cuthbert. As indicated in Tri-County's counterproposal, Channel 264A was first made available for application in 1986 and authorized to Station WDRL until June 12, 1992. However, the Commission did not subsequently issue a window notice following cancellation of the permit. After submission of McCrary's reply comments of January 4, 1994, McCrary separately filed a letter with the Commission requesting the issuance of a window notice so that he could file an application for this channel. McCrary understands

that he cannot file an application for Channel 264A at Cuthbert on a first-come/first-serve basis because that procedure is applicable only where no applications were filed during the window period. See Section 73.3573(g)(3) of the Commission's Rules. Furthermore, McCrary could not have filed his expression of interest at an earlier stage in this proceeding because the deletion was not proposed in the NPRM.

6. The Commission's policy on deleting an existing channel in the face of an expression of interest stems from the case of Martin and Salyersville, Kentucky, 50 RR 2d 502 (1981). In that case, an FM channel allotted to Martin, Kentucky (population 827) (1980 U.S. Census), which received no applications since its allotment three years earlier in 1978, was proposed to be reallocated to Salyersville, Kentucky (population 1,352), as its first FM and first full-time local service. The Commission's staff held that in view of the expression of interest filed for the Martin channel, the allotment priorities in effect did not provide a clear basis for reallocating the channel to Salyersville. The decision relied on the need to maintain administrative stability in Commission decisions and created a higher standard where channels are to be deleted versus the comparison of competing proposals for new allotments.

7. In subsequent decisions, e.g., Fond du Lac and Sheboygan, Wisconsin, 55 RR 2d 592 (1984), Red Oak, Iowa, 46 FCC

2d 341 (1979), Snow Hill and Kinston, North Carolina, 55 FCC 2d 769 (1975), and Montrose and Scranton, Pennsylvania, 3 FCC Rcd 1061 (1988), recon. denied 4 FCC Rcd 7799 (1989), rev. denied 5 FCC Rcd 6305 (1990), the Commission has consistently retained channels which were proposed to be deleted where an interest was expressed. The Commission has been so steadfast in its refusal to delete channels that it has created a standard which requires a compelling need for service elsewhere to justify deletion of a channel for which interest has been expressed.

8. In this regard, in the recent case of Montrose and Scranton, Pennsylvania, supra, 5 FCC Rcd at 6306, the Commission held that "we do not believe that the provision of a first local television service (at Montrose) is a sufficiently compelling reason for making the reallocation in this case."

9. The Commission's priorities are set forth in Revision of FM Assignment Policies and Procedures, 90 FCC 2d 88, 92 (1982) as follows:

- (1) first full-time aural service
- (2) second full-time aural service
- (3) first local service
- (4) other public interest matters

Co-equal weight is given to priorities (2) and (3). Here, the Cuthbert channel will provide a first FM local service and a first full-time local radio service. While such service may not rise to the level of priority 3, the Commission has not

previously held, as far as can be determined, that an upgrade in service is of a higher priority than a first FM or full-time local service, when faced with conflicting requests. Furthermore, as stated in the cases cited supra, there is a heavier burden attached to deleting a channel for which there is interest. In these cases, the Commission staff refused to delete a channel at Martin, Kentucky, in favor of a first FM and full-time local service at Salyersville, Kentucky; to delete a second FM channel at Kinston, North Carolina (priority 4), in favor of a first local service at Snow Hill (priority 3); and to delete an FM channel at Nebraska City, Nebraska (which already had an AM station), in favor of a first FM channel at Red Oak, Iowa (which also had one AM station). As indicated by these cases, the Commission is very reluctant to remove an existing channel. This would be especially true in cases involving a request to delete a channel merely to upgrade an existing facility to a higher class channel.

10. The only benefit set forth in the request by Tri-County to upgrade Station WQSY, Hawkinsville, is an increase in population of 124,441 persons within its proposed new 1 mV/m service area and a smaller gain area of 55,760 at Montezuma. What Tri-County fails to mention is that most of the WQSY gain area covers Warner Robins, Georgia (population 43,726) (1990 U.S. Census), which has four local radio stations, and part of

Macon, Georgia (population 106,612), which has 10 local radio stations.

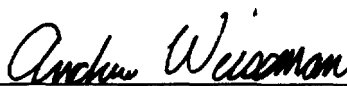
11. Thus, not only is the need for increased service at Hawkinsville not compelling, the proposal to upgrade the Hawkinsville (and Montezuma) channel(s) would not be justified at the expense of a first FM and full-time local service to Cuthbert even without the higher standard required to delete a channel which has an interested party.

12. Accordingly, Walter McCrary, Jr., urges the Commission to retain Channel 264A at Cuthbert so that he (or an entity in which he has an interest) can apply for the channel and construct the facility to serve the residents of Cuthbert. McCrary urges that the Commission open a filing window for the Cuthbert channel as soon as possible.

Respectfully submitted,

WALTER MCCRARY, JR.

By:



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February 14, 1994

CERTIFICATE OF SERVICE

I, Veronica Abarre, a secretary in the law firm of Mullin, Rhyne, Emmons and Topel, P.C., do hereby certify that I have this 14th day of February, 1994, caused to be mailed by first class mail, postage prepaid, copies of the foregoing "REPLY COMMENTS" to the following:

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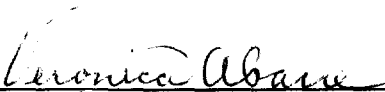
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